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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,167	01/31/2002	John L. Swinger	VIN1567-206	8732

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EXAMINER

KENNY, STEPHEN

ART UNIT	PAPER NUMBER
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3726

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/062,167		SWINGER, JOHN L. <i>cd</i>	
	Examiner		Art Unit	
	Stephen J Kenny		3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendment filed 12/2/04 added the limitation to the claims that the banding formed a "closed" loop. There is no support in the specification for this added limitation. While Figure 4 illustrates the loop formed by the banding machine, it fails to disclose that the loop is a "closed loop". A "closed loop" is one that is continuous with no breaks or disconnects throughout; in other words a "closed loop" has neither a beginning nor an end. The leading end of band 40 in Figure 4 is a single strip that may or may not reattach (e.g. by twisting, tying, or applying adhesive) to the strip of band material being supplied from the reel supply, however this does not constitute a closed loop in that the tip of the band is merely attached to the remainder of the band strip. Thus it is not a continuous band.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

In light of the above USC 112 rejection which nullifies the added limitation of a “closed loop”, claims 6, 14, 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Frizzell (US Patent No 821232).

Regarding claims 6, & 14, Frizzell discloses assembling a fence section comprising rails (11) & pickets (12) connected to each other, and wrapping a band (16) around said fence section forming a loop that extends to wrap around the rails to secure the picket together (column 1, lines 33+ & Figure 1).

Regarding claims 19-20, Frizzell discloses additional pickets (12) secured by additional bands (16) wrapping around the fence sections to secure the rails & pickets (Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-13, 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frizzell in view of Applicant's Admitted Prior Art (AAPA).

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Regarding claims 1, 5, 8-13, Frizzell discloses the claimed invention as discussed above, except for the use of a banding machine.

AAPA discloses that the use of a banding machine is well established within the art, and commercially available from several distributors (page 4, line 1). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to form a fence section as disclosed by Frizzell with the use of a commercially available banding machine as taught by AAPA in order to increase the speed & ease of the banding process.

Regarding claims 2-4, 7, 15-18 Frizzell discloses the claimed invention except for explicitly stating that the rails contain channels for receiving the pickets; and that the components are made of plastic.

AAPA discloses that channels formed in the rails to receive the pickets is a concept old and well known in the art (paragraph 006). Additionally, forming the components of plastic is considered merely a design choice and would have been readily apparent to an artisan of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to form a fence section as disclosed by Frizzell, having channels in the rails, and formed of plastic as taught by AAPA in order to form a more secure & durable fence section.

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In alternative to the USC 112 & 102 rejections set forth above claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frizzell in view of Applicant's Admitted Prior Art (AAPA).

Frizzell discloses the claimed invention except for forming a "closed loop" band.

AAPA discloses that forming a "closed loop" band is "the conventional banding technique" (paragraph 0023, line 7). In an effort to maintain established techniques and conform to the customary industry standards, it would have been obvious to form the band of Frizzell in a "closed loop" fashion as taught by AAPA.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J Kenny whose telephone number is 703-306-0359. The examiner can normally be reached on mon - fri 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4431. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DAVID P. BRYANT
PRIMARY EXAMINER